

² The record contains a decision dated October 7, 2014 issued in subsidiary file number xxxxxx808. Appellant has not appealed this decision and thus it is not before the Board at this time. *See* 20 C.F.R. § 501.3(a).

FACTUAL HISTORY

This case has previously been before the Board. By decision dated April 17, 2002, the Board affirmed a September 19, 2000 decision granting appellant a schedule award for 10 percent permanent impairment of the right arm and a January 20, 2001 decision denying his request for a hearing.³ The facts and the circumstances as set forth in the prior decision are incorporated herein by reference.

On December 30, 1997 appellant, then a 39-year-old mail handler, filed a claim for a traumatic injury (Form CA-1) alleging that on November 27, 1996 he strained his right shoulder in the performance of duty. OWCP accepted the claim, assigned file number xxxxxx850, for right shoulder strain, chronic bursitis and tendinitis of the right shoulder, and a torn right rotator cuff. Appellant underwent shoulder surgeries on May 26, 1998 and April 13, 1999.

OWCP also accepted appellant's August 1999 occupational disease claim for an acute left shoulder strain. It combined the left shoulder claim, assigned file number xxxxxx808, into file number xxxxxx850.

By decision dated June 16, 2011, OWCP reduced appellant's compensation to zero based on its finding that his actual earnings as a clerk fairly and reasonably represented his wage-earning capacity.⁴

On July 19, 2011 appellant accepted a position as a custodian. He worked in this position until April 2013, when he underwent an authorized right shoulder subacromial decompression and distal clavicle resection. OWCP paid appellant compensation for total disability beginning April 12, 2013.

In an office visit note dated October 31, 2013, Dr. Guenther O. Knoblich, an attending Board-certified orthopedic surgeon, noted that appellant's right shoulder was "doing very well" but that he was having difficulties with his left shoulder. He diagnosed status post right shoulder surgery and left shoulder impingement syndrome and acromioclavicular arthritis. Dr. Knoblich recommended left shoulder surgery.

In a work restriction evaluation dated November 5, 2013, Dr. Knoblich released appellant to return to work without restrictions.⁵

On November 25, 2013 appellant filed a claim for compensation (Form CA-7) beginning November 3, 2013 under the current file number. By letter dated November 26, 2013, OWCP

³ Docket No. 01-1438 (issued April 17, 2002).

⁴ In a decision dated December 31, 2013, OWCP denied appellant's claim for compensation beginning March 7, 2011 as he had not shown that the loss of wage-earning capacity determination should be modified.

⁵ On November 6, 2013 the employing establishment noted that appellant's physician released him to resume his usual employment under the current file number. Under another file number, accepted for a left shoulder condition, a work restriction evaluation contained limitations. The employing establishment inquired as to the status of the left shoulder claim, assigned file number xxxxxx808. OWCP advised that the claim was under development.

requested that he submit medical evidence supporting continuing disability from November 3, 2013.

In a decision dated December 31, 2013, OWCP denied appellant's claim for compensation beginning November 3, 2013. It found that Dr. Knoblich released him to resume work on November 5, 2013.

In a telephone call dated January 9, 2014, appellant advised OWCP that the employing establishment did not have a position available within his restrictions. He maintained that the release to his usual employment was to his permanent limited-duty position.

In a progress report dated December 2, 2013, Dr. Knoblich indicated that appellant related that his right shoulder "is awesome" but he was experiencing left shoulder problems with abduction. He opined, "I have discussed with [appellant] that his right shoulder is doing well. Dr. Knoblich still does not think that he is capable of doing his job. He is a mail handler with the shoulder. I have therefore recommended that [a] work capacity evaluation be done." Dr. Knoblich indicated that appellant probably required left shoulder surgery to "return to work in his somewhat manual labor profession."

In a January 27, 2014 work capacity evaluation, Dr. Knoblich diagnosed right shoulder rotator cuff sprain and syndrome. He released appellant to his permanent limited-duty job. Dr. Knoblich related, "The return to regular/usual job is the modified duty he had been assigned for many years. He is not able to return to the original job at injury (mail processing clerk)." Dr. Knoblich noted that appellant was scheduled for a functional capacity evaluation.

A functional capacity evaluation dated February 24, 2014 found that appellant could perform sedentary work. The evaluator noted that the accepted condition was status post right subacromial decompression and that he also had a right knee condition and bulging discs at L4 and L5.

A work capacity evaluation dated February 24, 2014 listed the accepted conditions as right shoulder sprain, right rotator cuff syndrome, and a right rotator cuff sprain. Dr. Knoblich completed the form and found that appellant could work eight hours per day in his usual modified employment. He listed restrictions of pushing, pulling, and lifting up to five pounds, reaching from the waist to chest only, and no climbing, reaching over the shoulder, or repetitive wrist and elbow movements. Dr. Knoblich referenced the functional capacity evaluation and determined that appellant could not work as a mail processing clerk.

In an e-mail dated March 3, 2014, the employing establishment informed OWCP that it had received "the attached updated medical dated January 27, 2014 reflecting the employee is not released to full duty, but rather released to the modified duty he had been assigned to previously." It noted that a progress report indicated that appellant's right shoulder was doing well but that he did not believe that he could perform his usual employment. The employing establishment attached a copy of the January 27, 2014 work restriction evaluation. It inquired whether it was obligated to offer limited-duty work to appellant due to his right shoulder condition.

In an e-mail response dated March 4, 2014, OWCP advised the employing establishment that as appellant was released to his usual employment, he was expected to perform his regular employment absent a medical report supported by objective findings.

On April 7, 2014 appellant requested reconsideration.⁶

On November 13, 2014 OWCP contacted the employing establishment to determine whether appellant had submitted the January 27 and February 24, 2014 work restriction evaluations.⁷ The employing establishment indicated that he had not submitted the forms but that OWCP provided it with a copy of the February 24, 2014 work restriction evaluation on July 21, 2014.

By decision dated November 17, 2014, OWCP denied modification of its December 31, 2013 decision. It found that the January 27 and February 24, 2014 work restriction evaluations from Dr. Knoblich established that appellant was able to return to his position as a modified custodian rather than his date-of-injury position. OWCP thus accepted that appellant had continued work restrictions as a result of his November 27, 1996 work injury. It found, however, that he had not sought suitable employment after Dr. Knoblich issued his limited-duty restrictions, and thus was not entitled to compensation beginning January 27, 2014.

On December 1, 2014 appellant requested reconsideration.

In an undated statement received by OWCP on December 1, 2014, appellant asserted that the employing establishment did not offer him a limited-duty position. He additionally advised that the nurse assigned by OWCP had submitted his restrictions to the employing establishment.

In another statement received December 1, 2014, appellant asserted that the nurse assigned by OWCP informed him that she had contacted the employing establishment and found that it did not have work available.⁸ He maintained that the nurse threatened Dr. Knoblich if he did not return him to full duty. Dr. Knoblich later found that he could perform limited duty. Appellant contended that the employing establishment did not offer him any position following his surgery. He indicated that he asked a manager if there was work available but the manager stated there was not. Appellant also related that he worked as a nixie clerk rather than a custodian.

By decision dated December 23, 2014, OWCP denied appellant's request for reconsideration after finding that he had not submitted evidence or raised an argument sufficient to warrant reopening his case for further merit review under 5 U.S.C. § 8128.

⁶ By decision dated June 5, 2014, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the right upper extremity.

⁷ In a form report relevant to disability retirement, Dr. Ruth Lowengart, a Board-certified internist, diagnosed bilateral shoulder impingement and rotator cuff strain and found that appellant had a deficiency in performing his work as a result of the diagnosed conditions.

⁸ In a form dated July 18, 2014, Dr. Lowengart again found that appellant could not perform his work as a result of bilateral shoulder impingement and rotator cuff strain.

In a decision dated January 15, 2015, OWCP vacated its December 23, 2014 decision after finding that it failed to consider appellant's statement. Following a merit review it denied modification of its November 17, 2014 decision.

On appeal appellant argues that OWCP refused to compensate him for time lost from work or assist him in returning to work or with retraining. He asserts that the employing establishment did not have work for him after he was released to return to work in November 2013.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁹ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained right shoulder strain, a torn right rotator cuff, and chronic right shoulder bursitis and tendinitis. In a decision dated June 16, 2011, it reduced his compensation to zero after finding that his actual earnings as a clerk fairly and reasonably represented his wage-earning capacity. In April 2013 OWCP authorized a right shoulder subacromial decompression and distal clavicle resection. It paid appellant compensation for total disability from April 12 until November 3, 2013, when it determined that he had no further disability due to his work injury. The Board notes that although OWCP did not characterize its December 31, 2013 decision as a termination of compensation, it nevertheless had the burden of proof to establish that appellant had no continuing disability as a result of his work injury, as it had paid him compensation for total disability from April 12, 2013 until it terminated his compensation effective November 3, 2013. A pretermination notice was not required, however, as OWCP paid appellant on the daily rolls for less than one year.¹¹

On October 31, 2013 Dr. Knoblich found that appellant's right shoulder was "doing very well" after surgery but that he had pain in his left shoulder. He diagnosed status right shoulder surgery and left shoulder impingement and acromioclavicular joint arthritis. In a work restriction evaluation dated November 5, 2013, Dr. Knoblich released appellant to resume his usual employment without restrictions. As appellant's attending physician, he had a thorough knowledge of his condition and thus his opinion constitutes the weight of the medical evidence.¹² OWCP, consequently, properly relied upon Dr. Knoblich's opinion in terminating his compensation effective November 3, 2013 as he had no continuing disability.

⁹ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

¹⁰ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4(a)(3) (February 2013).

¹² See *C.B.*, Docket No. 10-1623 (issued April 11, 2011).

LEGAL PRECEDENT -- ISSUE 2

As OWCP properly terminated compensation benefits, the burden of proof shifted to appellant to establish continuing disability after that date related to his accepted injury.¹³ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.¹⁴ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁵

Compensation for wage loss due to disability is available only for periods during which an employee's work-related medical condition prevents him from earning the wages earned before the work-related injury. An employee is not entitled to compensation for any wage loss to the extent that evidence establishes that he had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available.¹⁶

ANALYSIS -- ISSUE 2

Following the termination of compensation, appellant submitted reports dated January 27 and February 24, 2014 from Dr. Knoblich who indicated that he had continued work restrictions as a result of his injury and clarifying that he was released to his permanent modified work rather than to his date-of-injury position. Based on this evidence, OWCP accepted that appellant had continued work restrictions beginning January 27, 2014 as a result of his November 27, 1996 employment injury. It found, however, that he was not entitled to compensation because he did not seek suitable work when he was partially disabled. OWCP determined that appellant did not submit either the January 27 or February 24, 2014 work restriction evaluations showing that he was partially disabled to the employing establishment so that it could provide him with a limited-duty position.

Contrary to OWCP's finding, however, in an e-mail dated March 3, 2014 the employing establishment informed OWCP that it had received a January 27, 2014 work restriction evaluation and asked whether it should provide appellant with a limited-duty job offer. In response, OWCP advised that, if the claimant was released to full duty, he is expected to work full duty. However, it appears that he was not released by Dr. Knoblich to full duty at that time. Consequently, there is evidence that the employing establishment received the January 27, 2014 work restriction evaluation from Dr. Knoblich providing work restrictions but did not offer appellant a limited-duty position within the designated limitations. The case, therefore, will be

¹³ *Manual Gill*, 52 ECAB 282 (2001).

¹⁴ *Id.*

¹⁵ *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁶ 20 C.F.R. § 10.500(a).

remanded for OWCP to determine the periods to which he is eligible for compensation for his continuing disability.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's compensation effective November 3, 2013 as he had no further disability due to his November 17, 1996 employment injury. The Board further finds that he has established disability after November 3, 2013 due to his accepted November 27, 1996 employment injury. The case is remanded for OWCP to determine the period of disability.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board. The November 17, 2014 decision is affirmed.

Issued: April 14, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board